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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,818	02/18/2004	Floyd Backes	160-048	1488

34845 7590 04/09/2007  
McGUINNESS & MANARAS LLP  
125 NAGOG PARK  
ACTON, MA 01720

EXAMINER
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TRINH, TAN H

ART UNIT	PAPER NUMBER
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2618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/780,818

Applicant(s)

BACKES ET AL.

Examiner

TAN TRINH

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 05-27-2005, 04-28-2005, 10-28-2004, 10-25-2004 and 06-15-2004, the information disclosure statement has been considered by the examiner.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of copending Application No. 10/781, 536.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-5 of the copending application teach all limitations in claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781, 219.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-5 of the copending application teach all limitations in claims 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-5 of copending Application No. 10/781, 535.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4-5 of the copending application teach all limitations in claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shpak (U.S. Patent No. 6,907,229).

Regarding claim 1, Shpak teaches a wireless network (see fig. 1) comprising: a plurality of access points (see fig. 1, access points (AP) 22-23, 25 and 27), the access points cooperative to automatically choose channels for operation so that each access point uses a different channel (see col. 6, lines 28-38), the access points being further cooperative to share channels in a manner that minimizes interference if no free channels remain (see col. 6, lines 1-7 and lines 19-27); wherein access points sharing channels decrease their transmit power to minimize same channel interference (see col. 8, lines 64 - col. 9, lines 28); wherein access points transmit messages including a Backoff value to other access points (see col. 8, lines 64 - col. 9, lines 28). In this case the access point 22 is transmitted the Backoff value to other access point using the nominal level and below interference threshold level. The Backoff value indicating to the other access points how far the transmitting access point's power has been adjusted down (see col. 8, lines 64 - col. 9, lines 28). Shpak teaches the Backoff value indicating to the other access points how far to adjusted down, that is adjusted to below an agreed threshold. wherein the access points that received the messages use the Backoff value to determine their own Backoff values (see fig. 2, and col. 9, lines 12 - col. 10, line 29, and also see col. 4, lines 40 - col. 5, lines 18). In This case, since the access point 27 received the transmitted message from access point 22 and the transmit downlink signal with simultaneously with access 27 on the their own signals are keep below an agreed threshold (Backoff values). That is obvious to the the Backoff value indicating to the other access points how far the transmitting access point's power has been adjusted down.

Therefore, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify a above teaching of Shpak, in order to provide the power control on a plurality of access points and not to interfere with the transmissions of the first access point (See suggested by Shpak on col. 3, lines 24-26).

***Allowable Subject Matter***

6. Claim 3 is allowed.
7. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Reasons for allowance***

8. The following is an examiner's statement of reasons for allowance:

Regarding independent claim 3 and dependent claim 2, Shpak teaches a wireless network (see fig. 1) comprising: a plurality of access points (see fig. 1, access points (AP) 22-23, 25 and 27), the access points cooperative to automatically choose channels for operation so that each access point uses a different channel (see col. 6, lines 28-38), the access points being further cooperative to share channels in a manner that minimizes interference if no free channels remain (see col. 6, lines 1-7 and lines 19-27); wherein access points sharing channels decrease their transmit power to minimize same channel interference (see col. 8, lines 64 - col. 9, lines 28). However, Shpak alone or in combination with other prior art of record, fail to disclose; a plurality of stations associated across the access points, each station associated with one access point on one channel; wherein the stations receive messages from access points including the

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Backoff value; wherein the stations turn down their transmit power in response to the Backoff value received in the messages; wherein stations canvass other channels to see if another channel includes an access point that would provide better network performance; wherein better network performance is provided if an access point on another channel is closer than the access point to which the station is currently associated; if a station finds an access point on another channel that would provide better network performance, the station sends a message to the access point to request association with the access point; wherein access points receive the messages from the stations and selectively allow association of the stations to the access points based on the loading of the access point, as specified in independent claims 2-3.

***Conclusion***

**9. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(571) 273-8300, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).*

**10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (571) 272-7888. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.**

If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Anderson, Matthew D., can be reached at (571) 272-4177.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is (703) 306-0377.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh  
Division 2618  
March 31, 2007

**PATENT EXAMINER**  
**TRINH, TAN**

A handwritten signature in black ink, appearing to read 'Tan H. Trinh', with a horizontal line drawn underneath it.